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Can Congress Really Check the CIA?

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Can Congress Really Check the CIA?

If Hill oversight fails on Nicaragua, it may just be meaningless

By Jay Peterzell

MEMBERS OF CONGRESS struggling to control the not-so-secret war against Nicaragua are learning an unpleasant lesson about their ability to monitor covert action: the current oversight system is inadequate even when it works, and it does not always work.

This American intervention in Central America presents the most serious test to date of the credibility of that oversight system, which was established by a series of laws passed during the last decade. If Congress proves unable to control this controversial covert operation, it is hard to imagine when it will effectively use its oversight powers.

But the system is neither so simple nor so straightforward that it can be easily exploited. There are ambiguities in the law that hinder effective congressional oversight, and there are large practical problems that get in the way of any attempt to curtail 7 secret operation overseas. Perhaps most important, Congress has yet to display any willingness to actually stand in the way of an operation that the administration of the day wants to conduct. Without congressional courage, oversight will never be significant.

The problems begin at a fundamental level: A number of members and staff of the House and Senate intelligence committees say they are not certain they are even informed of some types of secret operations. In a series of recent interviews, they described specific instances in which agencies had exploited loopholes in reporting requirements or even evaded those requirements altogether in ways that appeared to violate the law.

For example, intelligence and congressional sources said the Defense Department had conducted a number of clandestine intelligence activities without obtaining a "presidential finding" or informing the intelligence committees as required by law. The actions, which were said to have ended last year, were undertaken by an organization whose existence has never been reported previously — the Army Intelligence Support Activity, a secret organization set up during the 1980 Iran hostage crisis to support paramilitary and hostage-rescue operations worldwide.

One of the ISA's actions, the officials said, was to provide equipment and support for a 1981 attempt by former special forces Lt. Col. James (Bo) Gritz to organize a search for American prisoners of war thought to be still held in Laos. The organization was also said to have conducted operations in Central America.

Sources who discussed the existence of the ISA said they were satisfied that its illegal activities had ceased.

Even when Congress is fully informed, some members say they have few effective ways to react to covert operations of which they disapprove. "It is very frustrating to have so little leverage over the intelligence community," one member noted. "You don't have a veto, so you have to satisfy yourself by hollering inside the tin can."

In recent interviews, intelligence committee members and current and former staff members and intelligence officials described the current system of congressional oversight. Many asked not to be identified. Their account is necessarily incomplete, both because of the sensitivity of some aspects of the subject and because, in the case of committee members and staff, they have no way of knowing that specific information has not been reported to them.

"Congressional oversight" of covert activities means that Congress is kept informed of these activities, and has the opportunity to influence them. Under the law, the executive branch must inform the House and Senate intelligence committees — in advance, except in dire circumstances — of all clandestine activities by U.S. operatives or their agents to influence events in foreign countries. Committee members can ask questions about these operations but cannot veto them. The law envisions a situation in which the executive branch takes seriously reservations that might be expressed by the committees, but in fact the executive does not have to respond to congressional misgivings. To stop a covert action, Congress has to cut off funds for it.

In practice, the president sends the committees a written "finding" that an operation is in the national interest. This document is studied by a small group of staff members who are "in the compartment," and at a secret but recorded hearing members can elicit details or clarifications from CIA and State Department officials. If the committees have reservations about the proposal they can ask the administration to review it. If they are still not satisfied they can write a letter to the president.

That has always been where the process stopped. "The system works well when there's a consensus" between Congress and the president, a former staff member noted. "It is not set up to deal with disagreements."

A parallel monitoring track is provided by the budget review process, which includes a yearly secret but recorded vote on each covert operation. In addition to authorizing funds for these and other intelligence actions, the committees approve reprogramming of money and are informed of (but do not approve) withdrawals from the CIA's contingency fund. This power of the purse is often described as "the teeth" of oversight. But committee sources admit it has never been used to cut off a significant, ongoing covert action.

It's important to understand what congressional oversight does not mean, too. It does not mean that the CIA makes daily or weekly trips to Capitol Hill to solicit approval for all secret activities. Nor does it mean the CIA is eager to volunteer its secrets to the intelligence committees. This is often a tooth-pulling process, and sometimes the dentist can't see all the teeth.

It's also important to know a little of the intelligence community's terminology. The term "covert action" does not cover all of the secret activities of American intelligence agencies. If the purpose of some clandestine action is to gather intelligence — not to influence events — then it need not be reported beforehand to Congress.

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Congressional 'Oversight' of CIA Is Faulty

Thanks to the clandestine war in Nicaragua, many of the problems of congressional oversight of intelligence activities are about to come to the forefront on Capitol Hill.

The Nicaraguan operation appears to be a case where Congress is getting all the information it considers relevant. "If you want the gods' own truth," one intelligence committee source says, "the flurry of activity about Central America is because we do have the facts."

Nicaragua is also a case where Congress has expressed a strong, explicit opinion on what is proper for the United States. This was the Boland amendment, named for Rep. Edward P. Boland (D-Mass.), chairman of the House intelligence panel, that was passed last year. It bars the use of funds "for the purpose of overthrowing the government of Nicaragua or provoking a military exchange between Nicaragua and Honduras."

An increasing number of congressmen — including Boland — are questioning whether this language is still being respected. Their doubts have been reinforced by the fact that the administration is also seeking more money for the operations. Congressional sources report that the administration's 1984 intelligence budget proposes a major increase in funding for paramilitary actions by Nicaraguan exile groups.

One official noted further that total proposed funding for covert operations had risen more sharply than the CIA budget as a whole — even allowing for large, non-operational outlays to rebuild weapons stocks and other "infrastructure" expenses.

Frustration over the Nicaraguan operation has led several members of the committees to begin examining ways to strengthen congressional oversight.

A March 23, 1983, staff memorandum prepared for Rep. Lee H. Hamilton (D-Ind.) listed steps a committee member can take in response to covert actions that seem to have gone out of control. Many of these steps have never been used or seriously considered. For example, the memorandum notes, members can move that the committee:

- Inform the Foreign Affairs committee about the operation (presumably, it would be inclined to react more aggressively than the intelligence panel);
- Disclose the operation to the full House in a secret session, perhaps with a recommendation to adopt new legislative restrictions on the activity;
- Officially disclose the operation to the public;
- Require by law that the committee give advance approval for covert actions;
- Formally restrict the types of covert actions the president may authorize.

Although the memorandum merely describes options, Rep. Wyche Fowler Jr. (D-Ga.), the current chairman of the oversight and evaluation subcommittee, said recently that he planned to conduct "a continuing review of covert actions, possibly leading to general policy guidance coming from our committee as to when covert actions are appropriate and when they are not."

Early this month, after a trip to Central America, Fowler said Congress should write such restrictive guidelines into law. Fowler plans to introduce legislation this week setting standards for permissible covert activities and giving the committee a veto over covert action proposals.

Other members said they should be informed about covert operations even before a presidential "finding" that they are desirable. "I think we have to insist on more consultation before the fact so they get a feeling where they can go and what the standards are," said Rep. William F. Goodling (R-Pa.). Others thought it is essential to react to the proposals before "the tilt" of bureaucratic momentum made them impossible to stop.

Most committee members and staff interviewed said their access to information about covert intelligence operations is adequate if they are willing to press the agencies — and if they ask the right questions.

Relations between the committees and the intelligence community did not improve on this score, as many expected they would, with passage of the 1980 Intelligence Oversight Act. The act reduced from eight to two the number of committees that are informed of covert actions. It also brought agencies other than the CIA under the approval and reporting system and established a firm requirement that the committees be given prior notice of covert operations except in extraordinary circumstances. It directs the intelligence agencies to "furnish any information" the committees request.

"When Congress collapsed from eight to two committees, many of us believed there would be a new day of openness and trust," said Rep. Charlie Rose (D-N.C.), who headed the oversight subcommittee until this year. "That day never came. It was foot-dragging and obfuscation as usual."

Most of those interviewed said the CIA had generally complied with the letter of the law. "I think on most covert operations we are getting a prior notification," said Sen. Walter D. Huddleston (D-Ky.). He said the notice was "sometimes very, very close to the initiation of the activities."

There are other problems facing committee members besides the issue of timely notification. One important area involves what amounts to a question of labeling: when is an intelligence operation a "covert action," and when is it something else — for example, "intelligence collection."

Committee sources, for example, cited the CIA's failure to give prior notice of a May 1981 incursion into Laos organized by the agency to determine if U.S. soldiers missing in action during the Vietnam War were still imprisoned there. One source recalled listening to CIA Director William J. Casey explain why he had not informed the committees. "He asserted every defense," the source said: first that the incursion was a Thai operation, then that the CIA could not expect other nations to do things on its behalf if it had to tell Congress, and finally that it was not a covert operation but an intelligence-gathering mission. "It was outrageous," the source said.

Others familiar with the incident said they thought there was some justice in Casey's last claim because the law does not require the CIA to give prior notice of intelligence collection operations. But, Huddleston said, "Some of us believe sensitive collection operations should be treated like covert action because the risk can be as great or greater."

The CIA has resisted this interpretation, though the agency does occasionally inform the committees of such operations in advance. More frequently, the committees are told about types of sensitive intelligence collection, but not given details. "We'd tell them we've got so many presidents on our payroll, but we wouldn't tell them which ones," a senior intelligence source said.

Another matter of labeling creates a different loophole through which the executive branch can slip unreported clandestine activities. It involves the arms export control act governing transfers of U.S.-made arms between other countries.

This law permits the president to authorize other nations that possess U.S.-made military equipment to transfer up to \$50 million worth to third parties without first informing a committee in Congress. Thus a country like Egypt could transfer \$49 million worth of U.S. equipment to opponents of the Marxist regime in Ethiopia, and no member of Congress would know about it.

This loophole isn't as hypothetical as it might seem. In October 1982, then-Israeli ambassador Moshe Arens confirmed press reports that Israel had sold U.S.-made military equipment to the Ayatollah Khomeini's army in Iran. Arens termed this as an attempt to help "bring down the Khomeini regime" by bolstering the army as a potentially independent institution. He said the sales were made in coordination with the U.S. government "at almost the highest levels."

The State Department claims the United States never authorized these Israeli sales to Iran. The congressional intelligence committee was not notified about them, committee sources said. It remains unclear exactly what happened, but that arms transfer appears to be related to joint U.S.-Israeli covert operations against Khomeini that were reported by The New York Times last year.

"It's a loophole," one source said of the arms transfer problem. "Where does the issue fall? The intelligence committees? The foreign policy committees? The armed services committees? It's an issue people have considered and say 'it's not my job.'"

Another factor impeding effective congressional oversight of covert operations is the intelligence agencies' apparent freedom to change the size and even the nature of an ongoing covert action in ways not anticipated or explicit in the original finding. "Some of them go on after the original conditions have changed," Sen. Patrick J. Leahy (D-Vt.) noted. "It is a matter of concern to me that there be some automatic turnoff."

One congressional source recalled that, under an earlier finding authorizing the CIA to support the Shah of Iran against domestic unrest, the agency had conducted propaganda and other covert actions to bolster the short-lived Bakhtiar government that replaced him. "The operations continued even though there was a new government, and even though by that time it was the agreed judgment of the analytic people in the CIA that the Bakhtiar government had no chance of survival," the source said. When the committee raised the issue of limiting the time for which covert action authorizations are valid, he said, the CIA "went ape. The findings never do run out, and the CIA regards that as desirable."

In the final analysis, the administration can only waltz through loopholes, violate reporting requirements, and ignore the concerns of intelligence committee members as long as congress and the intelligence committees allow it to do so. Whether these problems are solved by reforming the oversight system or by more vigorous use of the system now in place, the issue boils down to one of congressional will. A show of that will now is essential if effective oversight is to have a future.

What Is the Army's ISA Up to?

WHAT IS THE Intelligence Support Activity, and what has it been up to?

Until now, the existence of this component of the U.S. Army has never been disclosed. But according to a number of well-informed sources, the Intelligence Support Activity has been responsible for a number of illegal clandestine intelligence activities conducted without either a presidential finding or a report to the intelligence committees.

Early in 1982, the congressional intelligence committees learned of the ISA's actions — which they declined to enumerate — and conducted an investigation. Subsequently, the matter was referred to the Intelligence Oversight Board, an executive committee charged with examining questions of legality.

Although the organization came to the attention of Congress because of its involvement with Bo Gritz in 1981, apparently after the CIA's own unsuccessful operation in Laos, the Gritz mission was said to be "just a small part" of the ISA's activities. Several sources said the CIA had objected to the actions, which were approved and conducted outside normal channels. The sources said the ISA has undertaken a number of operations worldwide, including secretly providing equipment to foreign governments. The organization is now said to be involved in covert operations in Nicaragua. Its current activities are said not to violate the law.

Rep. Charlie Rose (D-N.C.), who was chairman of the House oversight subcommittee last year, declined to comment on the ISA's activities. But he said he was concerned that after the 1980 election "word went out that now Reagan is president and covert action is okay. There are lots of guys sitting around in the intelligence bureaucracy saying, 'Wouldn't it be nice if we could get one of those, too?' So the committee has had a hard time keeping an eye on an ever-expanding frontier."

Congressional sources said the Defense Department had made an effort to create yet another clandestine intelligence organization last year. They said Pentagon officials had argued that the CIA was not sufficiently responsive to their needs and that traditional military intelligence units were too visible. They requested funds in the 1983 budget to set up a new, secret intelligence organization with worldwide authority to conduct "human intelligence" espionage operations. The sources said the request had not been granted, in part because the experience with the ISA had created doubts that the new agency could be controlled.

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